



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

APR 28 2009

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Randy Chambers, Acting Chief, Environmental Law  
NGB-JA Office of Chief Counsel  
Jefferson Plaza #1, Suite 11300  
1411 Jefferson Davis Highway  
Arlington, Virginia 22202

William E. O'Connor, CPT, JA  
Joint Forces Headquarters  
The Adjutant General's Office  
P.O. Box 9023786  
San Juan, Puerto Rico 00902-3786

Re: In the Matter of Puerto Rico Army National Guard, et al.  
Docket No. RCRA-02-2008-7502  
Settlement with PRARNG

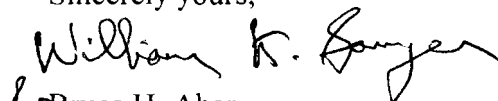
Dear Messrs. Chambers and O'Connor:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that your client, the Puerto Rico Army National Guard, makes arrangement for payment of the civil penalty in accordance with the timeframe specified in the CA/FO. Please also assure the deadlines specified for the Supplemental Environmental Project (SEP) are met in accordance with the time frames specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

  
for Bruce H. Aber  
Assistant Regional Counsel

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2009 APR 28 PM 1:00  
REGIONAL HEARING  
CLERK

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk  
Honorable Barbara A. Gunning, OALJ  
Julio Rodriguez, PREQB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG-311  
2008 APR 28 PM 1:00  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
:  
Puerto Rico Army National Guard, : CONSENT AGREEMENT AND FINAL ORDER  
Camp Santiago; and the Army and : (with Respondent Puerto Rico Army National  
Air Force Exchange Service, Camp : Guard, Camp Santiago)  
Santiago, Salinas, Puerto Rico :  
Respondents. : Docket No. RCRA-02-2008-7502  
:  
Proceeding Under Section 9006 :  
of the Solid Waste Disposal Act, :  
as amended :  
-----X

**PRELIMINARY STATEMENT**

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq. (hereinafter referred to as the "Act"). The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" on March 31, 2008 to the following two Respondents: the Puerto Rico Army National Guard ("PRARNG"), Camp Santiago; and the Army and Air Force Exchange Service ("AAFES"), Camp Santiago.

The Complaint alleged violations of the Act and the Commonwealth of Puerto Rico's approved regulations, called the "Puerto Rico Underground Storage Tank Regulations" (hereinafter "PRUSTR") promulgated by the Commonwealth of Puerto Rico Environmental Quality Board pursuant to the Puerto Rico Public Policy Environmental Act of 1970 (The Commonwealth of Puerto Rico received Program Approval on January 30, 1998.)

Specifically, the Complaint alleged several violations of the PRUSTR by the Respondents, PRARNG and AAFES. However, only the violations involving PRARNG are being resolved under this CA/FO. The violations that EPA alleged against AAFES are being resolved separately.

The Complainant and Respondent, PRARNG, have reached an amicable resolution of this matter and agree, by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Subsections 22.18(b) (2) and (3), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is the Puerto Rico Army National Guard, Camp Santiago (hereinafter "the Respondent" or "PRARNG").
2. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
3. Respondent is a "person" as that term is defined in Section 9001(5) of the Act, 42 U.S.C. §6991(5), and in 40 C.F.R. §280.12.

4. Respondent has been and remains the owner and operator of three “underground storage tanks” or “USTs”, as those terms are defined in Sections 9001(1) and 9001(3) of the Act, 42 U.S.C. §§6991(1) and 6991(3), and in 40 C.F.R. §280.12, located at Camp Santiago, State Road #1, Intersection Road #154, Salinas, Puerto Rico 00751 (the “Facility”), for all times relevant to this action.
5. On or about April 17 and 19, 2007, pursuant to Section 9005 of the Act, 42 U.S.C. Section 6991d, an authorized representative of EPA inspected the Facility, in order to determine the Respondent’s compliance with Subtitle I of the Act and the Rules in Parts 1 through 13 of PRUSTR.
6. EPA sent to Respondent an Information Request Letter (“IRL”) and Notice of Violation (“NOV”) on July 10, 2007, to determine the status of Respondent’s compliance with the Act.
7. Respondent PRARNG submitted a response to EPA’s IRL and NOV on behalf of it and Respondent AAFES on August 23, 2007. In addition, Respondent PRARNG submitted a response on September 23, 2007 to a request for follow-up information concerning release detection, cathodic protection, and spill and overfill prevention equipment.
8. Based on the inspection by EPA and the August 23, 2007 and September 23, 2007 responses to EPA’s IRL and NOV, the Complaint alleged that Respondent PRARNG committed violations of the following regulations:
  - (i) Rules 203 of PRUSTR (failure to submit an accurate notification to EQB for one of two PRARNG UST systems in the Petroleum, Oil and Lubricants (POL) area of the facility);

- (ii) Rules 302 (A) and 302(B) (2) and 302(D) of PRUSTR (failure to operate and maintain corrosion protection system and to maintain documentation of the operation of corrosion protection equipment for POL Tanks 1 and 2);
- (iii) Rules 302(B) and 302(D)(2) of PRUSTR (failure to inspect cathodic protection system of the POL UST Systems 1 and 2 within six months of installation and every 3 years thereafter and to maintain records of results of testing from the last 2 triennial inspections);
- (iv) Rules 302(C) and 302(D) (1) of PRUSTR (failure to inspect every 60 days) the cathodic protection system of POL UST Systems 1 and 2 and to maintain records of the results of the last 3 sixty (60) day inspections;
- (v) Rule 201(C) of PRUSTR (failure to have overfill prevention equipment on POL UST systems 1 and 2 and an UST System in the Maneuver Area Training Equipment Sites (MATES) area of the facility);
- (vi) Rules 305(B)(4), 305(C), 402(B)(2) and 406(B) of PRUSTR (failure to provide required release detection monitoring and to maintain release detection records for POL UST System 1 and the MATES UST system);
- (vii) Rules 305(B)(4), 305(C), 402(A), 402(B)(1), and 406(B) of PRUSTR (failure to provide required release detection monitoring and to maintain release detection records for POL UST System 2); and
- (viii) Rules 305(B), 405(A), 406(B) of PRUSTR (failure to conduct an annual test of the operation of the automatic line leak detector (ALLD) for POL UST System 2 and to maintain records of the test).

9. On June 6, 2008, Respondent PRARNG filed an Answer to the Complaint.
10. Respondent submitted to EPA a letter (including several attachments), dated August 13, 2008, which described and provided information and documentation of the compliance measures undertaken by Respondent PRARNG to comply with the Compliance Order section of the Complaint addressing violations set out in Counts 1 through 8 involving POL UST Systems 1 and 2 and the MATES UST System, and described in paragraph 8, above.
11. The parties have agreed that this settlement will include a Supplemental Environmental Project ("SEP"), as described further below.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. §6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed by and between the Complainant and the Respondent PRARNG that:

1. For purposes of this proceeding, Respondent (a) admits the jurisdictional allegations for this proceeding, as specified in this Consent Agreement and Final Order; (b) neither admits nor denies the above Findings of Fact and Conclusions of Law, and (c) consents to the terms of this Consent Agreement.
2. Within thirty (30) calendar days of the EPA Regional Administrator's signature of the Final Order in this settlement, Respondent shall provide: 1) a written certification to EPA that it has implemented measures to satisfy each of the requirements of the Compliance

Order, dated March 31, 2008, consistent with Respondent's counsel's August 13, 2008 letter (including attachments); 2) Provided it is true, Respondent shall also provide a written certification to EPA, for all UST systems that it continues to own and operate at its Camp Santiago facility, that it is in compliance with all applicable provisions of the approved Commonwealth UST regulations (PRUSTR). (If it is not true, Respondent shall identify any noncompliance and a schedule for its prompt resolution); and 3) a written certification to EPA that it has substituted an automatic tank gauging electronic release detection system for vapor monitoring for POL UST Systems 1 and 2 and the MATES UST system at the Facility.

3. The certifications in paragraph 2, above, shall include the following language:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate, and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of PRARNG. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true accurate and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

4. If in the future EPA believes that any of the information, including records demonstrating compliance, certified to, pursuant to Paragraphs 2 and 3 is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If EPA still believes the certification(s) is (are) materially inaccurate, EPA may, in addition to seeking stipulated penalties pursuant to paragraph 5, below, for noncompliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et*



*seq.*, or any other applicable law.

5. If the Respondent fails to provide, in a timely manner, the certifications and documentation required by Paragraphs 2 and 3, above, then Respondent shall be liable to EPA for a stipulated penalty in accordance with the following schedule, commencing on the first day of noncompliance and continuing through the date upon which compliance is

achieved:	<u>Period of Failure to Comply</u>	<u>Penalty Per Day Per UST System</u>
	1 <sup>st</sup> to 10 <sup>th</sup> day	\$500
	11 <sup>th</sup> to 30 <sup>th</sup> day	\$1,000
	31 <sup>st</sup> to 60 <sup>th</sup> day	\$2,000
	Each day in excess of 60 days	\$3,000

6. The Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, or the Director's representative, may grant an extension of the date of performance established in paragraph 2 of this Consent Agreement with regard to the certification and documentation required by such paragraph, if good cause exists for such extension, including, but not limited to, failures arising from causes beyond the reasonable contemplation of the parties and beyond the reasonable control and without fault or negligence of the Respondent. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than fourteen (14) calendar days prior to any due date (or later date if the grounds for such extension were not reasonably known to PRARNG at such time) set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing.

7. Unless Respondent provides EPA with a written explanation pursuant to Paragraph 8, below, all stipulated penalties are due and payable within thirty (30) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. All stipulated penalty payments shall be made in accordance with the delivery instructions (i.e., regular mail or overnight delivery) and to the addresses specified in Paragraph 10 of this Consent Agreement. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.
8. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement.
9. The Director of the Division of Enforcement and Compliance Assistance may, at the Director's sole discretion, reduce or eliminate any stipulated penalty due if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA or if the Director independently in her own discretion decides to take such action. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, at the Complainant's sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated

penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty required to be paid by Respondent pursuant to this Consent Agreement may result in further action for collection or appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such action so long as Respondent does not contest the terms of this Consent Agreement.

10. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of Thirty Nine Thousand Dollars (\$39,000), payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of Puerto Rico Army National Guard, Camp Santiago; and the Army and Air Force Exchange Service, Camp Santiago, Docket No. RCRA-02-2008-7502 and shall indicate the payment is only being made on behalf of the **Puerto Rico Army National Guard**. The check shall be mailed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO. 63197-9000

If overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
Attn: USEPA Box #979077  
St. Louis, MO. 63101

Respondent shall also send copies of this payment to each of the following

Bruce Aber  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866  
Attn: Karen Maples

The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the “due date”).

- a. Failure of Respondent to pay the penalty in full pursuant to this Consent Agreement will result in further action for collection or appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such action so long as Respondent does not contest the terms of this Consent Agreement; and
  - b. A late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30)-day period (or any portion thereof) following the due date in which the balance remains unpaid.
11. As part of the settlement of this matter, Respondent PRARNG agrees to implement a Supplemental Environmental Project (“SEP”) as authorized and in accordance with the “EPA Supplemental Environmental Projects Policy” (“SEP Policy”) which became

effective on May 1, 1998. The implementation of the SEP, which is set forth in the following paragraphs, will cost approximately \$670,000 (including capital expenditures and operation and maintenance) over a 5 year period. However, in computing the amount of the expenditure entitled to SEP credit, this amount is offset by \$200,000, which is the estimated cost to meet the Executive Order (“EO”) 13423 (dated January 24, 2007) requirement beginning in FY 2008 to reduce water consumption by 2% annually. Additionally, the adjusted SEP cost is further offset by the anticipated cost savings (\$315,000) in water purchases over a 5 year period, thereby lowering the total adjusted SEP cost to approximately \$155,000. Respondent PRARNG shall spend not less than 90% of the total adjusted cost of the SEP. Thus, the Respondent shall expend at least \$139,500 (over and above the approximately \$515,000 being spent pursuant to the Executive Order) on EPA-approved SEP-specific activities (“Required SEP Expenditure”).

12. Respondent agrees to implement the SEP in accordance with the terms and the schedule set forth in this CA/FO. For purposes of this Consent Agreement, days shall mean calendar days. Any proposed changes to the SEP must be approved by EPA.
13. Respondent shall perform a SEP in accordance with the following requirements:
  - (i) Objective: The objectives of this SEP are pollution prevention and pollution reduction.
  - (ii) Description: The SEP proposal was submitted to EPA by letter on or about August 12, 2008 and further described in follow-up emails (including attachments), dated September 22, 2008, and October 16, 2008, responding to EPA’s questions. The SEP will

involve installation and operation for at least five years of a Wash Rack System that will continuously recycle water used to wash motor vehicles on a four lane pad for the vehicle fleet of the Puerto Rico Army National Guard at the Camp Santiago facility. The wash water that is collected in a pit around the four lane pad will be treated by an electronic pulse system that separates solids from liquid. The water will be returned to the Wash Rack System and the solids will be dewatered and disposed of as solid waste and not hazardous waste, which is the current practice. Respondent estimates that the SEP will reduce water use by approximately 6% annually, or 1.2 millions gallons, since Respondent will not need to purchase as much water as it had to purchase before installation of this Wash Rack System. The SEP will result in water conservation that exceeds the Executive Order 13423 water conservation goal of reducing water consumption intensity by 2% annually.

The Wash Rack System will replace a full-time oil water separator, and, as mentioned above, it will reclaim the water used from vehicle washing, and treat the water so it can be reused. The Respondent will no longer need to send wastewater from vehicle washing to the local municipal sewerage treatment system, where wastewater is treated and eventually released into the environment. Thus, the Wash Rack system is expected to reduce the impact of wastewater (comprised of emulsified oils/greases, suspended solids and heavy metals from the vehicle washing) on the aquifer, thereby eliminating a source of water contamination.

14. Respondent shall perform the SEP activities in accordance with the schedule set forth below. All Plans and Reports shall be submitted in the English language.

**Activity****Date Deliverable Due**

SEP	
a) Submittal of a detailed SEP Plan to EPA for review and comment.	No later than sixty (60) days from the Regional Administrator's signature of the Final Order.
Respondent shall start the SEP activities and continue then for at least five (5) years.	Start Date: September 1, 2009 End Date: September 1, 2014
Respondent shall submit semi-annual Progress Reports.	Due Date: Every six months from the anniversary of the date of the Regional Administrator's signature of the Final Order.
SEP Completion Report	Date Due: By November 1, 2014

15. Within 30 days of receipt of EPA's comments, if any, on the SEP Plan, Respondent shall revise the SEP Plan to address EPA's comments.
  
16. Respondent shall provide EPA with semi-annual Progress Reports in English and in a form approved by EPA, starting six (6) months after the effective date of the Final Order and continuing until the SEP is completed. The Progress Reports shall inform EPA of Respondent's efforts to achieve milestones for the SEP, shall identify any issues or problems that have arisen in the implementation of the SEP and how issues or problems were addressed, and shall itemize and document the expenditures that Respondent has

made in connection with the SEP. Unless otherwise approved by EPA, copies of all invoices and a copy of documents related to the SEP and created or paid or received by Respondent during the reporting period shall be enclosed with the Progress Reports when transmitted to EPA. Respondent shall send the Progress Reports to the addressees in paragraph 17, below.

17. Respondent shall provide EPA a SEP Completion Report for the SEP, documenting the completion of the SEP and the expenditures made in connection with the performance of the SEP. All SEP expenditures are subject to approval by EPA. Said documentation shall be mailed to:

Charles Zafonte  
Compliance Assistance and Program Support Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, N.Y. 10007-1866

and

Bruce Aber, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency- Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866.

18. The SEP Completion Report for the SEP, which shall be submitted to EPA (to the addresses in paragraph 17, above) in English, on or before November 1, 2014, or by another date if approved by EPA, shall contain the following information:
  - a) Detailed description of the SEP as implemented;
  - b) Description of any problems encountered and the solutions thereto;



- c) Itemization of costs incurred which Respondent feels are eligible for SEP credit, accompanied by copies of invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and services for which payment is being made (if the itemization and documentation have been previously provided with a Progress Report, it will suffice to refer to the prior submittal);
- d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and,
- e) Description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits, including water use reduction, and pollutant reductions, if feasible).

19. Respondent agrees that failure to timely submit the Progress Reports or SEP Completion Report for the SEP shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 25 B., below.

20. Following receipt of any Progress Report and the SEP Completion Report, EPA will:

- a) accept the report;
- b) reject the report, notify Respondent in writing of deficiencies in the report and grant Respondent an additional thirty (30) days in which to correct any deficiencies and to resubmit the report to EPA. If EPA, after allowing Respondent thirty (30) days to correct any deficiencies, finds that the same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 25 B, below.

21. If EPA elects to exercise option 20(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval pursuant to this paragraph within 10 days of receipt of such notification. EPA and Respondent will have an additional thirty (30) days (or such time as the parties may agree to) from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, Respondent may ask that the Complainant or her representative review the matter. Thereafter, EPA shall provide a

written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 25 B., below.

22. In all documents or reports, including without limitation, Progress Reports for the SEP and the SEP Completion Report, which are submitted to EPA pursuant to this CA/FO, the following certification shall be signed by a responsible agency official (i.e., officer) of Respondent:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of PRARNG. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true accurate and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

23. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through the implementation of the SEP project as herein required, whether the SEP has been satisfactorily completed, whether the Respondent has made good faith, timely effort to implement the SEP, and whether costs expended are creditable to the SEP shall be the sole determination of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns to Respondent and provide it with an opportunity to respond, and/or correct the deficiencies. If EPA makes

a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

24. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation, and financing of the SEP and documentation supporting information in documents or reports submitted to EPA pursuant to this CA/FO, including the reports required to be submitted for the SEP, such as the Semi-Annual Progress Reports and the SEP Completion Report for the SEP required pursuant to this CA/FO. Respondent shall grant EPA and its authorized representative's access to such documentation and shall provide copies of such documentation to EPA within thirty (30) days of Respondent's receipt of a request by EPA for such information, or within such additional time as is approved by EPA in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO or from three (3) years from the satisfactory completion of the required SEP, whichever is later.

25. Stipulated penalties for non-compliance with the SEP will be calculated as follows:

A. In the event that EPA determines, in its sole discretion, that Respondent fails to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP described in paragraph 13 above (but excluding the violations specifically described in paragraph 25 B. and/or to the extent that the actual creditable expenditures for the SEP do not equal or exceed the required minimum

expenditure for the SEP, Respondent shall be liable for stipulated penalties (except as provided in subparagraphs (ii) and (iii), immediately below) according to the following provisions:

i) If EPA determines, in its sole discretion, that the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty in the amount of **Seventy Seven Thousand Five Hundred Dollars (\$77,500)**. Payment shall be transmitted using the same procedure specified in paragraph 10, above.

ii) If EPA determines, in its sole discretion, that the SEP is not completed satisfactorily, but:

(a) EPA determines that Respondent made good faith and timely efforts to complete the project; and

(b) Respondent certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required pursuant to paragraph 11 to be spent was expended on the SEP and EPA accepts that such expenditures are creditable for the SEP, then Respondent shall not pay any stipulated penalty.

iii) If EPA determines, in its sole discretion, that the SEP is satisfactorily completed, but:

(a) Respondent spent less than ninety (90) percent of the amount of money required to be spent for the SEP, and

(b) Respondent certifies, with supporting documentation, the costs that were expended on the SEP, and EPA accepts that such expenditures are creditable for the SEP, then:

Respondent shall pay a stipulated penalty in an amount equal to two (2) times the difference between the required expenditure for the SEP as set forth in Paragraph 11

above, and the amount the Respondent has expended that EPA determines is properly credited toward the SEP.

B. Notwithstanding any other provision of this Consent Agreement, stipulated penalties shall accrue per day per violation for the following types of matters: failure to comply with any schedule to submit records and documentation, including but not limited to reports and work plans, failure to include the required certifications or public statement and/or to revise any documents on schedule following receipt of comments; and/or failure to maintain and/or provide records. If deviation from the due dates/schedule in this Consent Agreement for the documents/reports/records described in this paragraph, has not been approved by EPA in writing pursuant to paragraph 32, below, and if Respondent is determined by EPA to be liable to EPA for a stipulated penalty, such liability shall commence on the first day of noncompliance and continue through the final date of completion of the activity for which compliance is achieved. Simultaneous penalties shall accrue for separate violations of the Consent Agreement. The stipulated penalties shall accrue as follows:

**STIPULATED PENALTY AMOUNTS**

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st to 10th day	\$500
11 <sup>th</sup> to 30 <sup>th</sup> day	\$1,000
31st to 60th day	\$2,000
Each day in excess of 60 days	\$3,000

C. Unless Respondent provides EPA with a written explanation in accordance with subparagraph D, below, all stipulated penalties are due and payable within sixty (60) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. Respondent agrees that such demand may be mailed to Respondent via its

counsel, Randy Chambers, Office of the Chief Counsel, National Guard Bureau, Jefferson Plaza 1, Suite 11300, 1411 Jefferson Davis Hwy, Arlington, Virginia 22202-3231. All stipulated penalty payments shall be made in accordance with the payment instructions in Paragraph 10 of this Consent Agreement. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

D. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have thirty (30) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant). Pursuant to paragraph 26, below, EPA shall evaluate the written explanation provided by the Respondent.

26. The Complainant may, at her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent.

Respondent shall pay the stipulated penalty amount indicated in EPA's notice within sixty (60) calendar days of its receipt of such written notice from EPA. Failure of

Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action or other appropriate action.

27. At any time prior to Respondent's payment of stipulated penalties, the Director, may, for good cause as independently determined by her, reduce or eliminate the stipulated penalty(ies). If the Director makes such determination, EPA shall notify Respondent in writing of any such action.
28. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of RCRA and regulations concerning the management of underground storage tanks."
29. Delays:
  - a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement, Respondent shall notify EPA in writing within thirty (30) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and may constitute a

waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

b) If the parties agree that the delay or anticipated delay in compliance with this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c) In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.

d) The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of actions called for by this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

30. The civil penalties and stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, Commonwealth or local law.

31. The SEP to be completed by Respondent, described in paragraph 13 of this Consent Agreement, has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding.



32. EPA Region 2 may grant an extension of the date(s) of performance or such other dates as are established in this Consent Agreement with regard to any of the SEP components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than thirty (30) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing.
33. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP described in paragraph 13 above (said SEP going beyond the requirement to reduce water consumption by 2% described in paragraph 11), by any federal, Commonwealth, local law, regulation or Executive Order; nor is Respondent required to perform or develop each SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with Commonwealth or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Respondent certifies that it had not committed to perform the SEP prior to the commencement of this action.
34. If EPA determines that Respondent's certification in paragraph 33 is inaccurate, then Respondent shall pay a stipulated penalty in the amount of Seventy Seven Thousand Five Hundred dollars (\$77,500). Payment shall be transmitted using the same procedure specified in paragraph 10, above.

35. If in the future EPA believes that any of the information certified to, pursuant to Paragraphs 2, 3 and 22 is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If the certification is materially inaccurate with respect to compliance with the requirements set forth in the Compliance Order and/or the SEP(s), EPA may, in addition to seeking stipulated penalties pursuant to paragraph 5, above, for noncompliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.
36. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent, PRARNG, to resolve the civil and administrative claims alleged in the Complaint against Respondent, PRARNG (upon full payment of the penalty and any stipulated penalty that comes due and the performance of obligations set forth in the Consent Agreement). Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing the remedies mentioned in 40 C.F.R. Section 22.18(c) for any violations of law. This CA/FO does not resolve the liability of the other Respondent, AAFES, for the claims asserted against it by Complainant in the Complaint issued in this case.
37. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

38. Respondent explicitly and knowingly consents to the assessment of the civil penalty and stipulated penalties as set forth in this Consent Agreement and agrees to pay these penalties in accordance with the terms of this Consent Agreement.
39. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
40. Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement.
41. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
42. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

43. Nothing in this Consent Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or other applicable law.
44. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of Federal, Commonwealth of Puerto Rico, or local law concerning USTs, nor shall it be construed to be a ruling on or determination of any issue related to a federal or Commonwealth or local permit.
45. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
46. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent PRARNG, its officers, directors, officials, agents, servants, authorized representatives and successors or assigns.
47. Each party hereto agrees to bear its own costs and fees in this matter.
48. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

49. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of the Puerto Rico Army National Guard, Camp Santiago; and the Army and Air

Force Exchange Service, Camp Santiago, Salinas, Puerto Rico, Docket No. RCRA-02-2008-

7502

RESPONDENT: Puerto Rico Army National Guard

BY:   
\_\_\_\_\_

(signature)

NAME

ANTONIO J. VICENS  
\_\_\_\_\_

(Please Print)

TITLE:

TAG-PR  
\_\_\_\_\_

DATE:

30 APR 09  
\_\_\_\_\_

In the Matter of Puerto Rico Army National Guard, Camp Santiago; and the Army and Air Force

Exchange Service, Camp Santiago, Salinas, Puerto Rico, Docket No. RCRA-02-2008-7502

COMPLAINANT: **United States Environmental Protection Agency  
Region 2**

BY: \_\_\_\_\_

*P. D'ARNO FOR PL*  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, N.Y. 10007-1866

DATE: April 21, 2009

In the Matter of Puerto Rico Army National Guard, Camp Santiago; and the Army and Air Force Exchange Service, Camp Santiago, Salinas, Puerto Rico, Docket No. RCRA-02-2008-7502

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent PRARNG to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



George Pavlou  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency – Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: April 23, 2009





Dated: April 28, 2009  
New York, New York

Mildred N. Baez  
Mildred Baez  
WTS Branch